IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1473 of 1982

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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HIRJI KARSAN TANK - Appellant(s)
Versus
CONTRACTOR ODHAVJI VALJI & 1 - Defendant(s)

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Appearance :
MR ND NANAVATI for Appellant(s) : 1,
MR HA RAICHURA for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 03/08/2006

ORAL JUDGMENT

1. By way of the appeal the appellant has challenged the judgement and order dated 28.12.1981 passed by the Commissioner of Workmen's Compensation, Junagadh in Workmen's Compensation Case No. 15 of 1980 whereby Commissioner has dismissed the application of the appellant.

2. The appellant had filed an application for compensation of Rs. 60,000/- from the respondents with penalty, costs and interest. The appellant was working as a carpenter on daily wage basis with respondent no.1 who had undertaken a contract from respondent no.2. On

31.12.79, the appellant was instructed by respondent no.1 to remove the wooden planks which supported the RCC slab. In the process of doing so, the RCC slab collapsed and the appellant received personal injuries. The trial court after hearing the parties passed the aforesaid order.

3. Learned advocate for the appellant has submitted that Tribunal has committed an error in holding that there is sufficient evidence to conclude that the brother-in-law of the appellant namely Keshavlal Virji was the sub-contractor and the appellant was his assistant and it was their entire duty as sub-contractor to carry out the work of slab and the wall. He further submitted that the Trial Court ought to have held that the appellant was employed by respondent No. 1 and 2 and received substantial injuries on the leg and shoulder and therefore he is not entitled to compensation as prayed for.

4. I have gone through the judgement and award of the trial court the appellant Hirji Karshan received serious injuries and sustained fractures in the left leg and left shoulder bone which resulted in permanent partial disability at 25%. On the facts of the case nothing on record to show that the appellant was workman of the

opponent No. 1 or opponent No. 2. As a result of perusal of records, I am of the view that the appellant Hirji Karshan was not a workman but he was helping his brother-in-law Keshavlal Virji in carrying out the sub-contract. The trial court has relied on ex. 48 and 49 which are the payment receipts clearly indicating that the appellant was not a workman but he was helping his brother-in-law Keshavlal Virji who had taken sub-contract from the respondent no.1. The trial court in para 17 of the award has gone into the evidence in detail and has come to the conclusion that it was due to the negligence of the brother-in-law of the appellant that the slab had collapsed and hence no compensation can be awarded to the appellant. I am in complete agreement with the reasonings adopted and findings arrived at by the trial Court and therefore do not find any substance in the matter for interference.

5. In the premises aforesaid, appeal is dismissed. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*